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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2633 OF 2006

Smt.Lilabai Sonu Solanki & ors. Petitioners
versus
Basir Kadar Khan & another Respondents

Mr.C.M.Lokesh for petitioners.

Ms.Shama Ghotekar i/by V.G.Ghotekar for respondent no.2.

CORAM : A.S.OKA, J.

DATE : 06th March 2007

PC :

1. Heard learned advocate for the petitioners and the advocate for the second respondent. The petitioners are the claimants in a claim petition under section 166 of the Motor Vehicles Act, 1988. In the said claim petition, an application was made by the petitioners under section 140 of the said Act of 1988. By the judgement and order dated 9th January 2001, the said application was allowed and the respondents were directed to pay a sum of Rs.50,000/- together with interest thereon. The said order was passed on the basis of particulars of the offending vehicle which

were on the record of the claim petition. As there was no compliance with the said order, an application for execution was moved by the petitioners. In the said application, the advocate for the second respondent filed an application running into four lines stating that the vehicle concerned was not insured with the second respondent and therefore appropriate order may be passed. On the basis of the said application, the learned Member of the Tribunal passed an order dated 11th October 2001 by which the original order passed under section 140 of the said Act of 1988 was modified and it was held that the second respondent was not liable to pay the amount under the said order.

2. Learned advocate for the petitioner submitted that there was no power vesting in the Tribunal to review its own order. He submitted that the application made by the second respondent was not even signed and verified by the concerned officer of the second respondent Insurance Company and the same was signed only by the advocate for the second respondent. He pointed out that no other document was placed on record along with the said application and the said application was made when the original order was sought to be executed

at the instance of the petitioners. Learned advocate for the second respondent placed reliance on a decision of Apex Court in the case of United India Insurance Co. Ltd. Vs. Rajendra Singh and others reported in 2000-ACJ-1032 and submitted that the Tribunal can always recall its own order.

3. I have considered the submissions. The view taken by the Apex Court in the case of United India Insurance Co. Ltd. (supra) is that the Tribunal is not powerless to recall its own order if it is convinced that the order was wrangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

4. In the present case, in the application filed by the second respondent it is not even alleged that there was any fraud or misrepresentation. Even in the impugned order there is no finding recorded that the earlier order was vitiated either by fraud or by misrepresentation.

5. The application made by the second respondent is not signed and verified by any officer of the second respondent. It is not clear from the

application as to the basis on which the factual statement made therein was made. Nothing was placed on record to show that any investigation was made and the result of the investigation revealed that the vehicle was not insured with the second respondent. In my view, such an application could not have been entertained by the Tribunal. The impugned order is illegal and deserves to be set aside. Hence I pass following order.

6. ORDER :-

a) The impugned order dated 11th October 2001 is quashed and set aside and the order dated 9th January 2001 passed by the Tribunal is restored;

b) This order will not preclude the second respondent from adopting legal remedies against the insured, if any;

c) Time of four weeks is granted to the second respondent to deposit the amount;

d) No order as to costs.

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(A.S.OKA, J.)